

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 24 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JESSICA C.,)	2 CA-JV 2010-0019
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and MURPHY S.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. J192019 and S192277

Honorable Hector E. Campoy, Judge

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Jane A. Butler

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Jessica C challenges the juvenile court's order terminating her parental rights to Murphy S., born in June 2009, on the ground of abuse or neglect, pursuant to

A.R.S. § 8-533(B)(2). Jessica contends the Arizona Department of Economic Security (ADES) did not present clear and convincing evidence that Jessica had abused or neglected Murphy. We affirm for the reasons stated below.

¶2 Before the juvenile court may terminate parental rights, it must find that clear and convincing evidence establishes at least one of the statutory grounds for terminating the parent's rights and that a preponderance of the evidence establishes severing the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). On appeal, we view the evidence and all reasonable inferences in the light most favorable to upholding the court's order. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We do not reweigh the evidence presented the court because, as the trier of fact, it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Consequently, we will affirm the court's order if reasonable evidence supports the factual findings upon which it is based. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 ADES filed its petition to terminate the parental rights of Jessica and Murphy's father Mathew in November 2009, after two-and-a-half-month-old Murphy was admitted to a Tucson hospital in August with life-threatening injuries, including a skull fracture, bilateral subdural hematomas, and retinal hemorrhaging. ADES alleged one or both parents had neglected or willfully abused the child by inflicting the injuries or failing to protect Murphy from such abuse as grounds for termination pursuant to § 8-

533(B)(2). “Neglect” is defined as “the inability or unwillingness of a parent . . . to provide [a] child with supervision . . . or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.” A.R.S. § 8-201(22). “Abuse” is defined as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement . . . caused by the acts or omissions of an individual having care, custody and control of a child.” § 8-201(2). Serious physical injury is defined, inter alia, as an injury that is diagnosed by a medical doctor and that creates a reasonable risk of death, or causes serious or permanent disfigurement, serious physical pain, or serious impairment of health. § 8-201(30).

¶4 In February 2010, after a consolidated dependency and severance hearing, the juvenile court issued a thorough minute entry that addressed the allegations of both the dependency petition and the motion to terminate Murphy’s parental rights. Among the court’s factual findings was that the parents “were the sole caretakers of Murphy during the vast majority of the time from his discharge from [one Tucson hospital] on August 24, 2009, up until his admission at [a second hospital] on August 28, 2009.” Murphy’s initial hospitalization was for what first was believed to have been a fractured leg but later was diagnosed as a urinary tract infection. The court further found that “[n]either parent took adequate precautions to ensure the safety of the child relative to the other parent or relative to the two caregivers (who provided no more than 9 hours of care between August 25, 2009 through August 28, 2009).” The court added, “The maternal grandmother has a history of instability and inability to care for her own children.” The court found, in addition, that neither parent had asked the other two caregivers about

Murphy's injuries and how they had occurred and that a nurse had overheard Jessica talking on the telephone and crying as she asked the person to whom she was speaking about obtaining legal counsel and commented she knew what had happened. The court found Mathew's response troubling; he claimed he had tried to call 9-1-1 twenty times on a cellular telephone that was not working properly and that did not permit him to dial for emergency services because it only responded to voice-activated dialing. The court concluded the parents had abused or neglected Murphy and termination of their rights was in the child's best interests.

¶5 On appeal, Jessica contends the evidence was not clear and convincing because there were explanations for some of the things the juvenile court found troubling and upon which it based its ruling. But at the heart of Jessica's appeal is a request that this court reweigh the evidence and give consideration to some of her explanations for what had occurred. For example, she asserts, relying on her own testimony, that she had not been referring to physical abuse of Murphy by her or Mathew when she was overheard commenting that she knew what had happened; rather, she argues she was referring to the procedures the child had undergone at the hospital. And, she explains, she only had asked about a lawyer because Mathew's stepmother, the person with whom she had been speaking, had suggested Jessica and Mathew might need attorneys. It was for the court, as the trier of fact, to decide whether to accept Jessica's testimony as true or to reject it and draw the contrary inferences that it obviously drew. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205.

¶6 There was an abundance of evidence, particularly the medical testimony, from which the juvenile court could have concluded Murphy had sustained serious, permanent, life-threatening injuries and had experienced pain as a result of nonaccidental trauma. Neither parent explained to medical personnel, to the detective who interviewed them at the hospital, or to the Child Protective Services case worker, how Murphy had sustained these injuries, other than telling the detective and the case worker he had bumped his head on a wall while his father was holding him. Because there was no direct evidence of how Murphy was injured, it was for the court to determine what had occurred and whether the parents had neglected or abused the child based on the evidence presented and the inferences permitted by that evidence.

¶7 To the extent Jessica is suggesting the juvenile court was required to find she had abused or neglected Murphy, she is mistaken. The court could terminate her rights if it found she had abused or neglected the child or she “knew or reasonably should have known that a person was abusing or neglecting” him and had been unable or unwilling to protect him from an unreasonable risk of harm. *See* §§ 8-533(B)(2); 8-201(2), (22). Given the evidence ADES presented, including the testimony and reports of pediatric neurologist Dr. Dinesh Talwar and pediatric intensive care specialist Dr. Katri Typo, which the court summarized in its order, the court had before it sufficient evidence to support the termination of Jessica’s parental rights on the ground of abuse or neglect. The evidence also included, the court noted, an exhibit that confirmed the telephone conversation the nurse had overheard Jessica having with Mathew’s

stepmother; the nurse's notes reflect that, after stating she knew what had happened, Jessica cried "and was silent on the phone for a few minutes."

¶8 No purpose would be served by restating the juvenile court's ruling in its entirety. Rather, because there is reasonable evidence to support the court's findings of fact and because we see no error of law in its order, we adopt it. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Jessica has not sustained her burden of establishing the court erred when it terminated her parental rights to Murphy, and we therefore affirm its order.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge